

## **CHAPTER 14 MISCELLANEOUS**

### **Rule 5.14.1**

#### **Attorneys Seeking to be Relieved as Attorney of Record**

Absent a properly executed substitution of attorney form, attorneys will only be relieved as attorney of record pursuant to a noticed motion and court order in accordance with Code of Civil Procedure, section 284(2) and California Rules of Court, rule 3.1362 using the mandatory Judicial Council forms (MC-051, 052 & 053). The entry of a status-only judgment may not be a basis for withdrawal pursuant to Code of Civil Procedure section 285.1.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Renum. 1/1/2010; Rev. 1/1/2011)

### **Rule 5.14.2**

#### **Bifurcation of Marital Status**

A request to bifurcate the trial of the marital status from the remaining issues in the case will ordinarily be granted, and the requesting party will be permitted to present jurisdictional testimony to obtain a judgment of dissolution (status only). The motion to bifurcate must have attached a completed Judicial Council form FL-315. The court order must comply with Family Code section 2337.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Renum. 1/1/2010; Rev. 1/1/2011)

### **Rule 5.14.3**

#### **Writs of Execution**

Writs of execution on judgments or orders in a fixed amount, or based on judgments or orders providing for installment payments, do not require a judicial officer's signature or notice to the opposing party before presentation to the records division of the clerk's office for approval and issuance.

A supporting declaration must be submitted to the clerk. The declaration must allege, under penalty of perjury, the date and amount of the judgment or order, the date and amount of any payments thereon and the current, unpaid balance. For writs based on installment judgments or orders, the declaration must clearly set forth in columns the date and amount of each payment as it came due, the date and amount of any payments received and a running total of the amount owing. The supporting declaration for either type of judgment or order must also state that no other writ on this judgment or order is outstanding in the same county and that the arrearages have accrued within the past 10 years, unless the arrearages relate to child support, spousal support or family support in which case Family Code section 4502 will govern.

The writ may include the fee paid for issuance of the writ. If attorneys' fees are requested, a hearing is required, and a current Income and Expense Declaration must be filed with the application. If the moving party is requesting interest on the arrearages or costs not awarded in the original order, a declaration setting forth the calculation of the amount of interest on the arrearages or a cost bill must be filed.

(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2010)

### **Rule 5.14.4**

#### **Elisors**

Where one of the parties fails to execute a document necessary to carry out a court order, the Clerk of the Superior Court or the Clerk's authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor should be made by noticed motion or OSC. When applying for the appointment of an elisor, the application and proposed order must designate "The Clerk of the Court or the Clerk's Designee" as the elisor. The application must not set forth a specific court employee. The declaration supporting the application must include specific facts establishing the necessity for the appointment of an elisor.

If the Court grants the application for appointment of an elisor, the applicant must contact the business office to make an appointment for the actual signing of the document(s) to ensure the availability of an authorized elisor. If the elisor is signing documents requiring notarization, the applicant must arrange for a notary to be present when the elisor signs the document(s).

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2010)

### **Rule 5.14.5**

#### **Appraisal of Closely Held Business Interests**

**A. Standard of Value for Business Appraisal.** Businesses are appraised in Family Law proceedings to establish the value of the interest to the spouse who is awarded the business.

**B. Procedure to be Followed in Appraisal Process.** Unless the parties agree via written stipulation to appoint and compensate a joint appraiser, the identification of appraisers for each side will be subject to Code of Civil Procedure section 2034 et seq. The parties will notify the court at the initial CMC of the need to set dates for the identification of expert trial witnesses, including appraisers.

**C. Appraisal Reporting Requirements.** The appraisal must state the specific reasons that would justify the use of the appraisal method(s) chosen. The appraisal must state the risk and other factors specific to this business that were considered in selecting the capitalization rate and the nature of the impact each factor had on this rate. The appraiser must state the factors considered in arriving at any reasonable compensation estimate used in the appraisal, including compensation studies or other reference materials. The appraisal must state the factors considered in making any other adjustments, assumptions or estimates made in the appraisal process.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Renum. 1/1/2010)

#### **Rule 5.14.6**

##### **Restraint of Accounts**

The court will not grant a temporary restraining order to enjoin the removal of funds or securities from financial institutions or securities firms unless there is notice to the opposing side or a declaration stating facts which show a clear danger of the dissipation of funds.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Renum. 1/1/2010)

#### **Rule 5.14.7**

##### **Discretionary Dismissal**

Pursuant to Code of Civil Procedure section 583.410 and California Rules of Court, rule 3.1340, cases in which a judgment has not been filed or which have not been brought to trial within three years after the action was commenced may be set for a hearing to dismiss the case. The filing of a judgment or a dismissal will vacate the hearing. If the Petitioner/Plaintiff does not appear at the hearing the case will be dismissed without prejudice, subject to the court's reservation of jurisdiction to set aside the dismissal nunc pro tunc. Cases involving DCSS will be reinstated administratively once service has been obtained.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Renum. 1/1/2010)

#### **Rule 5.14.8**

##### **Family Law Facilitator's Duties**

The services provided by the Family Law Facilitator are pursuant to Family Code sections 10004 and 10005.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Renum 1/1/2010)

#### **Rule 5.14.9**

##### **Communication Between Court Divisions**

The San Diego Superior Court has developed and adopted communication procedures among its court divisions issuing criminal protective orders and orders involving child custody and visitation that meet the minimum elements set forth in California Rules of Court, Rule 5.450(c), including:

**A.** A procedure requiring courts issuing any orders involving child custody or visitation to make reasonable efforts to determine whether there exists a criminal court protective order that involves any party to the action; and

**B.** A procedure requiring courts issuing criminal court protective orders to make reasonable efforts to determine whether there exist any child custody or visitation orders that involve any party to the action.

**C.** A procedure by which the court that has issued a criminal court protective order may, after consultation with a court that has issued a subsequent child custody or visitation order, modify the criminal court protective order to allow or restrict contact between the person restrained by the order and his or her children.

**D.** The requirements of Penal Code section 136.2(f)(1) and (2).

(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008; Rev. & Renum. 1/1/2010)

#### **Rule 5.14.10**

##### **Appointment of Counsel Under Service Members Civil Relief Act**

See San Diego Superior Court Local Rules, Division One, rule 1.4.4.

(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008, Rev. 1/1/2009; Rev. & Renum. 1/1/2010; Rev. 1/1/2011)